

In re ) Fair Hearing No. 10,099  
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Appeal of )

The petitioner appeals the decision by the Department of Social Welfare denying her application for general assistance (G.A.). The preliminary issue is whether the Department's regulations--which deems lump-sum payments that have resulted in the closure of an individual's ANFC grant to be considered "income" for G.A. purposes throughout the period of the ANFC closure--are consistent with the G.A. statute.

The facts, at least as they pertain to the preliminary issue to be addressed, are not in dispute. In July 1990, the petitioner received from her mother's life insurance a payment of \$18,301.95. She has had no other income since that time. She alleged, however, that by October 15, 1990, she had spent all of that money. Moreover, she concedes that she did not spend a large portion of it on "necessities" within the meaning of the ANFC regulations governing the shortening to the ANFC disqualification period.<sup>1</sup>

On October 15, and again on October 29, 1990, the petitioner applied for and was denied G.A. for food and personal needs. Originally, the Department denied both

applications because the petitioner "could not account" for over \$7,000.00 of her lump sum she alleged to have spent. At the hearing, the petitioner submitted evidence in the form of checking account statements showing that she had, indeed, written checks for most, if not all, of the amount in question. However, the Department, relying on W.A.M. § 2608(1) (see infra) continued to maintain that the petitioner was ineligible for G.A., regardless of whether she had actually spent the money.

For the purpose of deciding the preliminary issue herein--whether § 2608(1) is consistent with the G.A. statute--it is unnecessary to render findings whether or not the petitioner actually spent the money or whether she is without "resources" sufficient to meet her needs.

ORDER

The Department's decision is reversed in that W.A.M. § 2601(1) conflicts with the G.A. statutes. The matter is remanded to the Department to determine the petitioner's eligibility for G.A. according to other applicable regulatory criteria.

REASONS

The statutes establishing the G.A. program<sup>2</sup> (Title 33, Chapter 38) include the following provisions:

§ 3004. Eligibility

- (a) Consistent with available appropriations, the department of social welfare shall furnish general assistance under this chapter, except as provided below, to any otherwise eligible individual unable

to provide the necessities of life for himself and for those whom he is legally obligated to support.

Except for those in catastrophic situations as defined in regulations, no general assistance shall be provided in the following situations:

- (1) To any individual whose income from any source, including the department of social welfare, during the 30 days immediately preceding the date on which assistance is sought is equal to the general assistance eligibility standard . . .

The Department's regulations (W.A.M.) include the following:

ə 2608 Income

Income means the total gross sum of all monetary remunerations received from any source for any reason.

The following list identifies some kinds and sources of income:

1. ANFC payments. Deductions to recover overpayments withheld prior to receipt shall be counted as income received. Lump sum payments resulting in closure of an ANFC grant for a specified period, even though received more than 30 days ago, shall be considered as income received throughout the period of ANFC closure . . .

The petitioner contends that the inclusion of the ANFC lump-sum disqualification period within the G.A. definition of income conflicts with the 30-day income standard set forth in the G.A. statute. The Department argues that ə 2608(1) permissibly "adds to the statute" by setting forth an "example of income". A "plain reading" of the statute clearly supports the petitioner's position.

Although the Department generally has substantial discretion in the administration of the G.A. program, the

statute clearly and unequivocally provides that for purposes of determining G.A. eligibility, 30 days is the standard by which to measure the receipt of income. By, in effect, "deeming" as "available" to a G.A. applicant income that was actually received more than 30 day prior to an application for G.A., W.A.M. § 2608(1) conflicts with the statutory standard. The Department cannot accomplish by regulations what the statute simply does not allow. Vermont State Employees' Assn. v. State of Vt, 151 Vt 492 (1989); Fair Hearing No. 8210.<sup>3</sup> To the extent that the Department's decision in this matter was based on W.A.M. § 2608(1), it is reversed.

This does not end the matter, however--far from it. On remand, not only is the Department authorized to investigate in detail the circumstances surrounding the petitioner's alleged spending of the money in question, but the petitioner can also be required to account for how she spent it. See 33 V.S.A. §§ 3005-3006 and W.A.M. §§ 2604 and 2608.

Given the amount of money in question and the short amount of time in which it was allegedly spent, it is only fair to warn the petitioner that it would be reasonable for the Department to apply a high degree of scrutiny in its "verification" of the petitioner's alleged need for G.A.<sup>4</sup>

FOOTNOTES

<sup>1</sup>If she had, she may have been entitled to a shortening of the ANFC disqualification period. See W.A.M. 2250.1.

<sup>2</sup>The G.A. program is entirely state-created, state-funded, and state-administered. There are no federal statutes or regulations that pertain.

<sup>3</sup>Arguments as to the policy considerations behind § 2608(1), to the extent that they do not begin to establish that the plain language of the statute produces an "absurd" or "irrational" result (the Department, in oral arguments before the board, had frequently conceded the "harshness" of the lump-sum rule), are irrelevant.

<sup>4</sup>The petitioner is, of course, free to appeal any adverse decision by the Department that may result.

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